UNITED STATES PATENT AND TRADEMARK OFFICE

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10/510,449	04/05/2005	Bertrand Bouvet	0600-1183	2431

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EXAMINER
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NOTIFICATION DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _03 February 2010_.
2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1-20_ is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) _1-20_ is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a) ☐ All b) ☐ Some * c) ☐ None of:
      1. ☐ Certified copies of the priority documents have been received.
      2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____ .

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____ .

DETAILED ACTION

1.   This communication is in response to Application No. 10/510,449 filed nationally on 05 April 2005 and internationally on 04 April 2003. The response presented on 03 February 2010, which amends claims 1, 3-7, 12, 14-17, 19-20, and presents arguments, is hereby acknowledged. Claims 1-20 are currently pending and have been examined.

35 USC § 112

2.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Response to Arguments

3.   Applicant's amendments and arguments, filed in the response dated 03 February 2010, have been fully considered. Except for the rejections below, all outstanding rejections under 35 USC 112 are hereby withdrawn.

Claim Rejections

4.   Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, this claim recites "means for access" in stanza one. Applicant appears to be invoking 35 USC 112 sixth paragraph. However, the phrase "means for

access" appears nowhere within applicant's specification. Applicant indicates in their specification pg 13, lines 29-34, that a programmable controller of the control server is suitable for communicating over a network in order to "establish links and data over that network ... with the user management server". However, applicant has not specified a particular algorithm with which the programmable controller is configured to perform such functionality. Thus there is confusion as to what structure is being designated as this means. For purposes of further examination, the examiner will consider a programmable controller with access to servers via a network to meet this structure.

Further regarding claim 1, this claim recites "automatic means forming a catalog". It is unsure whether applicant is invoking 35 USC 112 sixth paragraph for this limitation. As this stanza does not pass the first prong of 35 USC 112 sixth paragraph analysis, the examiner will not consider it to be invoked. See MPEP 2181 I.

Further regarding claim 1, this claim recites "means for exchanging information". Applicant appears to be invoking 35 USC 112 sixth paragraph. However, the phrase "means for exchanging information" appears nowhere within applicant's specification. Applicant indicates in their specification pg 17, lines 26-30, that the programmable controller receives the ... exchange authorization data. However, applicant has not specified a particular algorithm with which the programmable controller is configured to perform such functionality. Thus there is confusion as to what structure is being

designated as this means. For purposes of further examination, the examiner will consider a programmable controller capable of receiving to meet this structure.

Further regarding claim 1, this claim recites "means for determining parameters". Applicant appears to be invoking 35 USC 112 sixth paragraph. However, applicant's specification only indication of the structure performing this is "the module" (applicant specification: pg 17, lines 32-38) and is therefore no clear link to actual structure. As such, any programmable controller will be considered to meet this structure.

Further regarding claim 1, this claim recites "automatic means of data exchange control". It is unsure whether applicant is invoking 35 USC 112 sixth paragraph for this limitation. As this stanza does not pass the first prong of 35 USC 112 sixth paragraph analysis, the examiner will not consider it to be invoked. See MPEP 2181 I.

Regarding claims 2-19, these claims inherit the rejection rationale presented for their parent claim(s); and further:

Claims 2-15 and 17-19, with the exception of a further limitation of means for listed in claim 1, these claims' recitations of "means" will not be treated under 35 USC 112 sixth paragraph because they do not pass the first prong of 35 USC 112 sixth paragraph analysis. See MPEP 2181 I.

Claim 16, this claim recites "means for debiting", however the examiner can identify no clear link to structure in the specification for this "means for". As such, any programmable controller will be considered to meet this structure.

Claim elements "means for access", "means for exchanging information", "means for determining parameters", and "means for debiting" are means plus function limitations that invokes 35 U.S.C. 112, sixth paragraph. The written description only implicitly or inherently sets forth the corresponding structure, material, or acts that perform the claimed function.

Pursuant to 37 CFR 1.75(d) and MPEP §§ 608.01(o) and 2181, **applicant is required to**:

(a) Amend the claim so that the claim limitation will no longer be a means (or step) plus function limitation under 35 U.S.C. 112, sixth paragraph; or

(b) Amend the written description of the specification such that it expressly recites the corresponding structure, material, or acts that perform the claimed function and clearly links or associates the structure, material, or acts to the claimed function, without introducing any new matter (35 U.S.C. 132(a)); or

(c) State on the record what the corresponding structure, material, or acts, which are implicitly or inherently set forth in the written description of the specification, perform the claimed function.

35 USC § 103

5.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

Response to Arguments

6.   Applicant's amendments and arguments, filed in the response dated 03 February

2010, with respect to the rejections under 35 USC 103(a) have been fully considered

and are persuasive. Therefore, the rejection has been withdrawn. However, new

grounds of rejection may appear below.

Claim Rejections

7.   Claims 1-10, 13-16, and 18-20 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Daly et al (US 5,878,141); and in further view of Giordano et al (US

2009/0228336 A1) and Kenner et al (US 6,269,394 B1).

Regarding claim 1, Daly teaches a data exchange system over a data transfer network

between a receiver station (STB) and a data server with conditional access (service

provider), in which data exchanges over the data transfer network are managed and

authorized by a control server (Head end server) (Daly: Figures 3-4, col 9, lines 8 – col

11, line 22), wherein the control server comprises:

means for access to sponsoring institutions (Daly: col 12, line 66 – col 13, line 34

provides the head end has access to the sponsoring institution of the selected payment

method);

automatic means forming a catalog of payment instruments, the payment

instruments being usable and accessible by a user of said receiver station for selection,

by the user, of one of these payment instruments (Daly: abstract; col 12, lines 12-53

provides for creating set of selectable payment instruments from intersection of

subscriber approved payment methods and merchant approved payment methods);

means for exchanging information with the sponsoring institution associated with

the selected payment instrument to receive credit or billing data associated with the

selected payment instrument (Daly: col 13, lines 22-35);

automatic means for determining parameters for control of the data exchanges

over said network corresponding to the credit or billing data (Daly: col 13, lines 22-35

provides for denying payments and access to goods/services); and

automatic means of data exchange control over the network according to the

determined parameters (Daly: col 13, lines 22-35 provides for denying access to

goods/services).

Daly does not teach wherein the sponsoring institutions comprise at least two

different user management servers, each user management server providing credit or

billing data associated with the respective payment instrument; and

while Daly teaches the concept of pay per view and implies making subscribers

pay for content and services (Daly: col 2, lines 21-39), Daly fails to explicitly recite that

the data exchanges are between the receiver station and said data server with

conditional access, and access to such data being controlled.

Giordano, in a similar field of endeavor, teaches wherein the sponsoring

institutions comprise at least two different user management servers providing credit or

billing data associated with the respective payment instrument (Giordano: Figure 3,

plural items 16 and 52; [0013]; [0045]; Figure 5; [0047]; See also [0049]-[0050]).

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to utilize the teachings of Giordano for interfacing to multiple

payment authorities. The teachings of Giordano, when implemented in the Daly system,

will allow one of ordinary skill in the art to receive approval for billing transactions from

multiple different interbank networks. One of ordinary skill in the art would be motivated

to utilize the teachings of Giordano in the Daly system in order to allow users to pay with

multiple brands of credit/debit instruments.

While the Daly/Giordano system teaches the concept of pay per view and implies

making subscribers pay for content and services (Daly: col 2, lines 21-39), the

Daly/Giordano system does not explicitly teach the data exchanges being between the

receiver station and said data server with conditional access, and access to such data

being controlled.

Kenner, in a similar field of endeavor, teaches wherein the data exchanges are

between the receiver station and said data server with conditional access, and access

to such being controlled (Kenner: col 34, line 31 – col 35, line 20 provides for restricting

access to paying users in a pay-per-view system).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the teachings of Kenner for making users pay for downloadable media content. The teachings of Kenner, when implemented in the Daly/Giordano system, will allow one of ordinary skill in the art to allow users to select between payment instruments for purchasing downloadable content. One of ordinary skill in the art would be motivated to utilize the teachings of Kenner in the Daly/Giordano system in order to charge users for downloadable content such as on-demand movies.

Regarding claim 2, the Daly/Giordano/Kenner system teaches wherein said means for forming a catalog of usable payment instruments comprises:

storage means comprising predetermined list of payment instruments authorized for access to said conditional access data (Daly: col 12, line 11-28);

data acquisition means relating to a constitution and operation of the system and elements comprising the receiving station (Daly: col 12, lines 28-42); and

means of establishment of the catalog of at least two usable payment instruments from at least a list of authorized instruments and of acquired data relating to the system (Daly: col 12, lines 11-65).

Regarding claim 3, the Daly/Giordano/Kenner system teaches wherein said data acquisition means further comprises:

means of analysis of the receiver station and for acquiring data relating to a

nature of the receiver station or data relating to exchange capabilities of the receiver

station (Daly: col 12, lines 12-28 provides for retrieving the user's spending limits, etc).

Regarding claim 4, the Daly/Giordano/Kenner system teaches wherein said data

acquisition means further comprises:

means of connecting the receiver station to the network and for providing data

relating to the connection between the receiver station and the network or data relating

to a time of the data exchanges (Daly: col 12, lines 12-28; col 2, lines 20-39).

Regarding claim 5, the Daly/Giordano/Kenner system teaches wherein said control

server further comprises:

means of remote interrogation of said means of connection to obtain said data

(Daly: col 7, lines 26-39).

Regarding claim 6, the Daly/Giordano/Kenner system teaches wherein said automatic

means for determining parameters for control of the data exchanges are connected to

means of storing data concerning conditions of access to said data with conditional

access (Daly: Figure 4; col 8, lines 36-46); and

wherein means for determining parameters is connected to means for storing

exchange authorization data associated with the payment instrument to establish said

exchange control parameters (Daly: Figure 4; col 12, lines 11-65).

Regarding claim 7, the Daly/Giordano/Kenner system teaches wherein said automatic

means for determining parameters for control of the data exchanges is connected to

means of supervising an operation of the receiver station receiving, from said means of

supervising of the operation of the receiver station, data relating to a state of activity or

the operation of the receiver station (Daly: col 11, lines 22-45).

Regarding claim 8, the Daly/Giordano/Kenner system teaches wherein said means for

supervising is formed by software means initially stored in the system and transmitted to

said receiver station on which the software means reside reside throughout the data

exchanges (Daly: col 9, lines 8-63; col 7, lines 26-47).

Regarding claim 9, the Daly/Giordano/Kenner system teaches wherein said exchange

authorization data associated with the selected payment instrument corresponds to one

of temporal credit data, monetary credit data, fixed charge credit data, data volume

credit data, and billing data (Daly: abstract; col 8, lines 20-45; col 13, lines 22-35).

Regarding claim 10, the Daly/Giordano/Kenner system teaches further comprising:

        a user management server associated with the selected payment instrument

comprises at least one database containing said exchange authorization data

associated with the payment instruments (Daly: col 12, lines 12-65 for payment

authorities maintaining authorization data; abstract for wherein stored in database).

Regarding claim 13, the Daly/Giordano/Kenner system teaches further comprising:

means for determining a user identifier associated with said payment instruments

in order to allow an identification by said user management server of a corresponding

user account (Daly: col 12, lines 11-28).

Regarding claim 14, the Daly/Giordano/Kenner system teaches wherein said means for

determining a user identifier are automatic means of identification of the receiver station

(Daly: col 12, lines 11-28).

Regarding claim 15, the Daly/Giordano/Kenner system teaches wherein said means for

determining a user identifier are means of manually inputting an identifier (Daly: col 11,

lines 23-45).

Regarding claim 16, the Daly/Giordano/Kenner system teaches further comprising:

means for debiting said exchange authorization data, associated by said user

identifiers to said payment instrument, for debiting said authorization data according to

the data exchanges (Daly: col 13, line 58 – col 14, line 10).

Regarding claim 18, the Daly/Giordano/Kenner system teaches wherein said data

exchange control means are suitable for being interposed between said data server and

said receiver station in order to directly control all the data exchanges between said

data server and said receiver station (Daly: Figure 3).

Regarding claim 19, the Daly/Giordano/Kenner system teaches wherein said data

exchange control means are interrogated periodically by said receiver station in order to

transmit to said data exchange control means or not an authorization for access to the

data of said data server (Daly: col 9, line 49 – col 10, line 6; col 16, line 22-32).

Regarding claim 20, this claim contains limitations found within that of claim 1 and the

same rationale of rejection is used, where applicable.

8.   Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Daly et al (US 5,878,141); in view of Giordano et al (US 2009/0228336 A1) and Kenner

et al (US 6,269,394 B1); and in further view of Riley et al (US 2002/0010800 A1).

Regarding claim 11, the Daly/Giordano/Kenner system teaches wherein said user

management server is a server that provides user management capabilities (Giordano:

Figure 3, plural items 16 and 52; [0013]; [0045]; Figure 5; [0047]; See also [0049]-

[0050]).

        The Daly/Giordano/Kenner system does not teach wherein the user management

server provides access to said data transfer network, said user management server

connecting said receiver station to said network.

Riley, in a similar field of endeavor, teaches a server (network access system)

that provides access to said data transfer network, said server connecting said receiver

station (host computer) to said network (Riley: Figures 1-3; See also [0052]-[0053]).

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to utilize the teachings of Riley for managing the data connection

between the receiver station and the network. The teachings of Riley, when

implemented in the Daly/Giordano/Kenner system, would allow for secure access

regulation between the receiver station and the data network. One of ordinary skill in

the art would be motivated to utilize the teachings of Riley in the Daly/Giordano/Kenner

system in order to prevent information leaking.

Regarding claim 12, the Daly/Giordano/Kenner does not teach wherein said user

management server is a server controlling the physical means of connection of the

receiver station to the data transfer network.

Riley, in a similar field of endeavor, teaches wherein said user management

server is a server controlling the physical means of connection of the receiver station to

the data transfer network (Riley: Figure 4).

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to utilize the teachings of Riley for managing the data connection

between the receiver station and the network. The teachings of Riley, when

implemented in the Daly/Giordano/Kenner system, would allow for secure access

regulation between the receiver station and the data network. One of ordinary skill in

the art would be motivated to utilize the teachings of Riley in the Daly/Giordano/Kenner

system in order to prevent users from bypassing the user management server.

9.   Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Daly et

al (US 5,878,141); in view of Giordano et al (US 2009/0228336 A1) and Kenner et al

(US 6,269,394 B1); and in further view of Adam et al (US 2002/0181710 A1).

Regarding claim 17, the Daly/Giordano/Kenner system teaches wherein said debiting

means are accessible by said control server and the user management server (Daly:

Figure 4).

        The Daly/Giordano/Kenner system does not teach wherein the debiting means

comprises a debiting server connected to a telephone type network and wherein said

debiting server is accessible through a programmable call controller.

        Adam, in a similar field of endeavor, teaches wherein said debiting means

comprise a debiting server connected to another network of the telephone type and

accessible through a programmable call controller (Adam: Figure 4; abstract).

        It would have been obvious to one of ordinary skill in the art at the time the

invention was made to utilize the teachings of Adam for using a mobile phone

administration server to debit user bank accounts. The teachings of Adam, when

implemented in the Daly/Giordano/Kenner system, would allow for communication over

telephone networks. One of ordinary skill in the art would be motivated to utilize the

teachings of Adam in Daly/Giordano/Kenner system in order to utilize already-established networks.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEFFREY NICKERSON whose telephone number is (571)270-3631. The examiner can normally be reached on M-Th, 9:00am - 7:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Philip Lee can be reached on (571)272-3967. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. N./
Examiner, Art Unit 2442

/Philip C Lee/
Acting Supervisory Patent
Examiner, Art Unit 2442